

KENNETH E. HARDMAN

ATTORNEY AT LAW

DIRECT DIAL: (202) 223-3772

**1015 – 18TH STREET, N.W., SUITE 800
WASHINGTON, DC 20036-5204**

FACSIMILE: (202) 223-4040

kenhardman@att.net

EX PARTE MEMORANDUM

May 31, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: T-Mobile *et al.* Petition for Declaratory Ruling Regarding
Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92

Dear Ms. Dortch:

On May 27, 2005, the undersigned, on behalf of the American Association of Paging Carriers (AAPC), met with the Wireline Competition Bureau's Tamara Preiss, Victoria Goldberg, Steve Morris and Jay Atkinson, and with the Wireless Telecommunications Bureau's Peter Trachtenberg, Nese Guendelsberger and Paul Murray, to discuss AAPC's Petition for Reconsideration filed in CC Docket No. 01-92 on April 29, 2005, and actions unilaterally taken by Qwest in response to the Commission's so-called *T-Mobile* decision.

The undersigned reviewed AAPC's legal objections to the rule changes adopted by the Commission as part of its response to T-Mobile's declaratory ruling, which are detailed in AAPC's petition for reconsideration. AAPC acknowledged that under the Commission's Section 332 powers, the Commission can impose an obligation on the part of CMRS providers to negotiate interconnection arrangements at the request of ILECs, but AAPC reiterated that the Commission may not lawfully, under the *USTA*¹ decision, impose compulsory arbitration obligations at the state commissions on CMRS providers. In addition, the undersigned elaborated upon existing billing disputes between RBOCs and paging carriers arising out of action taken in response to the so-called "Metzger Letter" interpreting Section 51.703(b) of the Commission's rules in the context of paging carriers,² and explained why permitting ILECs to request interconnection and impose compulsory arbitration on paging carriers gives the ILECs unwarranted bargaining leverage in such billing disputes. This is so because the cost of arbitration easily can equal or exceed the value to the paging carrier of the billing dispute, and thus unfairly works to the ILECs advantage in negotiating a resolution of the dispute.

¹ *USTA v. FCC*, 359 F.3d 554, 566 (DC Cir. 2004) (subsequent history omitted).

² *In the matter of Southwestern Bell Telephone Request for "clarification" of the Commission's rules regarding interconnection between LECs and paging carriers*, DA 97-2726, released December 30, 1997, 13 FCC Rcd 184 (CCB 1997).

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The undersigned further reviewed actions unilaterally undertaken by Qwest in response to the T-Mobile decision and stated that Qwest's response is a good illustration of the unintended interpretation and consequences of that decision. Specifically, in response to the T-Mobile decision, Qwest has withdrawn its tariffs at the state commissions governing interconnection with paging carriers, presumably because such tariffs require paging carriers to pay compensation for connecting circuits in limited circumstances. Further, Qwest has circulated a template interconnection agreement drafted by it and has notified the paging carrier recipients that if they do not object to the agreement within 30 days, Qwest will assume they agree with the template and will file it as a voluntarily negotiated agreement for approval by the state commission.

The undersigned first argued that Qwest's withdrawal of the tariffs is an unwarranted interpretation of the Commission's decision, because those tariffs do not govern terminating compensation. The undersigned further argued that whether or not Qwest correctly interprets *T-Mobile* as requiring Qwest to withdraw its state tariffs governing paging carrier interconnection, assuming an agreement after 30 days cannot possibly be squared with the ILEC's obligation to negotiate in good faith. The undersigned advised the attendees that AAPC has not yet determined what action it will take in response to Qwest's actions.

Any questions concerning this filing should be directed to the undersigned.

Respectfully submitted,

s/Kenneth E. Hardman
Kenneth E. Hardman

*Attorney for American Association of
Paging Carriers*

cc: Ms. Tamara Preiss
Ms. Victoria Goldberg
Mr. Steve Morris
Mr. Jay Atkinson
Mr. Peter Trachtenberg
Ms. Nese Guendelsberger
Mr. Paul Murray